



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

December 15, 2003

Mr. Lee Veness  
Assistant County and District Attorney  
Ellis County  
1201 North Highway 77, Suite B  
Waxahachie, Texas 75165-5140

OR2003-9008

Dear Mr. Veness:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 192808.

The Ellis County and District Attorney's Office (the "District Attorney") received a request for Ellis County Sheriff's Department (the "Department") report numbers 02-05758 and 02-05762. You inform us that "by agreement," the requestor has been provided with most of the requested information. On behalf of the Department and the District Attorney, however, you assert that a portion of report number 02-05762 is excepted from disclosure under sections 552.101 of the Government Code.<sup>1</sup> We reviewed the information you submitted and considered the exception you claim. We have also considered comments submitted to this office by the requestor. See Gov't Code § 552.304.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrines of common-law privacy, which protects information from disclosure when (1) it contains highly intimate or embarrassing facts, the publication of which would be highly

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<sup>1</sup>We note that in a letter to the District Attorney dated October 7, 2003, the requestor withdrew his original request for report numbers 02-05758 and 02-05762, but by the same letter, re-requested these reports, with the exception of "those items (Social security numbers, addresses, etc.) that are not available under [the Act]."

objectionable to a reasonable person, and (2) the public has no legitimate interest in the information. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

This office has found that the following types of information are excepted from required public disclosure under constitutional or common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, see Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, see Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, see Open Records Decision No. 470 (1987), and identities of victims of sexual abuse, see Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

Upon review of the information you seek to withhold under section 552.101 and privacy, we find that this information is not protected under common-law or constitutional privacy, and therefore, may not be withheld on this basis. See *City of Sherman v. Henry*, 928 S.W. 2d 464 (Tex. 1996) (neither federal or state constitutions provide right of privacy for police officer denied promotion due to sexual affair with wife of another officer).

You also argue that a portion of the submitted information is excepted under section 552.101 in conjunction with section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise,

concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Family Code section 51.04(a) states that the Juvenile Justice Code, Title 3 of the Family Code, "covers the proceedings in all cases involving the delinquent conduct or conduct indicating the need for supervision engaged in by a person who was a child within the meaning of [Title 3] at the time he engaged in the conduct." Fam. Code § 51.04(a). There is no indication, however, that the information in question concerns an investigation of delinquent conduct or conduct indicating a need for supervision. *See* Fam. Code § 51.04(a). Therefore, the District Attorney may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

However, a portion of the submitted information may be excepted from disclosure under section 552.1175 of the Government Code. The submitted information consists of a police incident report. Because the District Attorney does not hold the report as the employer of the individual in question, section 552.1175, which applies to current peace officers, is the applicable exception for this information under these circumstances. This section provides in part that

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). However, although information submitted to this office indicates that the individual in question is a licensed peace officer, you do not inform this office, nor does any of the submitted information indicate, whether the individual whose information is at issue has notified the District Attorney of his election of confidentiality for this information in accordance with the above-cited subsections 552.1175(b)(1) and (2). *See, e.g.,* Open Records Decision No. 678 (2003) (concluding that county voter registrar was authorized to release voter information made confidential under section 552.1175 of Government Code to another governmental entity, but that transferred information would not be confidential in possession of transferee until recipient governmental entity receives a section 552.1175 notification). If the individual is currently a licensed peace officer who complies with section 552.1175(b), the District Attorney must withhold the information that we have marked. If not, the District Attorney must release this information, as well as the remaining submitted information, to the requestor.

To summarize, the submitted information must be released to the requestor in its entirety, with the possible exception of the information we have marked to be withheld under section 552.1175, if the individual in question is a licensed peace officer who has made an election under section 552.1175(b) with the District Attorney to withhold the marked information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free,

at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/jh

Ref: ID# 192808

Enc: Submitted documents

c: Joey Dauben  
The Ellis County Press  
P.O. Box 370  
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(w/o enclosures)